92-1056

No. 92-____

Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1992

* * * * * * * * *

TIMOTHY BRAY,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

* * * * * * * * *

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF IDAHO

* * * *

PETITION FOR WRIT OF CERTIORARI

* * * *

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QUESTION PRESENTED FOR REVIEW

Whether Timothy Bray's Fourth Amendment rights against unreasonable searches and seizures were violated when a police officer, responding to a motorcycle accident, conducted an inventory search of two saddlebags belonging to Bray and found illegal drugs, when there were no specific provisions in the law enforcement inventory policy regarding opening closed containers.

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OPINION BELOW

The opinion of the Idaho Court of Appeals, 92.10 ICAR 639, 834 P.2d 892 (1992) is reproduced as Appendix A. The Order of the Idaho Supreme Court, denying a timely filed Petition for Review is reproduced as Appendix B.

JURISDICTION

The opinion of the Idaho Court of Appeals was issued on May 4, 1992. Following a timely Petition for Review to the Idaho Supreme Court, the Idaho Supreme Court, on August 28, 1992, denied the Petition for Review. This Court's jurisdiction in invoked under 28 U.S.C. § 1257(a). The judgment of the Idaho Court of Appeals decided a federal question in a way that conflicts with applicable decisions of this Court.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment of the United States Constitution provides:

> [Unreasonable searches and seizures.]--The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article 1, Section 17, of the Constitution of the State of Idaho provides:

> 17. Unreasonable searches and seizures prohibited.-- The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the

place to be searched and the person or thing to be seized.

STATEMENT OF THE CASE

Timothy Bray conditionally pled guilty under Idaho Criminal Rule 11 to possession of a controlled substance with intent to deliver, reserving his right to appeal from a district court order denying his motion to suppress.

The Idaho Court of Appeals, in State v. Bray, 92.10 ICAR 639, 834 P.2d 892 (1992) affirmed the District Court's conclusion that the inventory search was the reasonable exercise of a police caretaking function, not proscribed by the Fourth Amendment.

The background and facts surrounding the search and seizure are set forth as follows in State vs. Bray, 92.10 ICAR 639, 834 P.2d 892 (1992) (Appendix A):

On August 24, 1988, Bray was riding a motorcycle on state Highway 55 near the top of Horseshoe Bend Hill when he lost control of the motorcycle. Idaho State Police Officer George Stokesberry was the first officer to arrive at the scene of the accident. When Stokesberry arrived, a number of people were gathered around the accident scene, and Bray was sitting on a guardrail receiving medical attention to an EMT who had happened to pass by. The motorcycle which Bray had been riding had been picked up and parked on its kickstand by the side of the road and a number of items which had fallen off of the motorcycle during the crash had also been picked up and placed on top of the motorcycle. Stokesberry observed that Bray was covered with dirt and blood and had sustained various lacerations and abrasions about his head, face, and hands. Stokesberry also observed that Bray had a severe injury to his foot where the motorcycle's footpeg had gone through his boot. As a result of the foot injury, Bray was unable to walk. Stokesberry learned that an ambulance had already been called to the scene.

In conversing with Bray, Stokesberry noted that Bray was

very concerned about the motorcycle and that Bray repeatedly expressed the desire to be left alone and to ride away from the scene on his own. Having determined, however, that Bray would pose a risk to himself and others if allowed to operate the motorcycle in his present condition, Stokesberry informed Bray that he would not be allowed to operate the motorcycle and that a wrecker had been called to retrieve it. Ultimately, Bray consented to being transported by ambulance to a hospital for treatment of his injuries.

Before Bray was placed in the ambulance, one of the ambulance attendants advised Stokesberry that Bray was carrying a gun in his belt, and requested that Stokesberry confiscate the gun. Stokesberry did so, and asked Bray if he had any other weapons in his possession. Bray replied that he had a .357 magnum in one of the motorcycle's saddlebags.

At the time of this incident, the official policy regarding inventory searches of impounded vehicles set forth in the Idaho State Police Operations Manual provided that "[i]n every case, all impounded vehicles must be inventoried by the impounding officer on ISP

> Form 112 prior to the time the wrecker operator takes control of the vehicle." Pursuant to this policy, Stokesberry performed an inventory of the items contained within and on the motorcycle. Stokesberry commenced by inventorying the contents of the motorcycle's two leather saddlebags. The lids of these saddlebags were unlocked but fastened by leather straps and buckles. Upon inventorying the saddlebags, Stokesberry found, among other things, a .357 magnum revolver; six bottles containing sodium chloride (a chemical used to manufacture methamphetamine); and several plastic bags, containing substances which appeared to be methamphetamine, marijuana, and LSD. One of the plastic bags containing the methamphetamine also contained three bundles of cash, each bundle containing $1,000.

The Bureau of Narcotics dispatched investigator David Kynoch, who conducted a number of field tests at the scene to make a preliminary determination as to the nature of the substances found in

Bray's saddlebags. Kynoch's tests indicated that the plastic bags contained methamphetamine, LSD, and marijuana. Kynoch took the items containing the contraband back to the laboratory for further testing.

After Kynoch removed the items containing the contraband, Stokesberry finished inventorying the property on the motorcycle, noting such items as a pair of binoculars, a scanner that was evidently broken during the accident, thirty-four rounds of .38 ammunition, some .22 magnum ammunition, a red leather coat, chaps, a yellow rain coat and pants, miscellaneous clothing, three fishing poles and reels which apparently had also been broken during the accident, a 35mm camera, and tools. Stokesberry took these items to a state police

warehouse. The motorcycle was initially transported to the storage facilities of the wrecker, and was later transported to the state police warehouse.

Bray was subsequently charged with two counts of possession of a controlled substance with intent to deliver, one count of concealing a deadly weapon, and one count of basic rule infraction. A preliminary hearing was held, after which Bray was bound over for trial in the district court. Bray then filed a motion to suppress in the district court, alleging that the evidence seized from the saddlebags and admitted at the preliminary hearing should have been suppressed because the inventory of the saddlebags violated his Fourth Amendment rights against unreasonable searches and seizures. After a hearing on the motion,

the district court issued a memorandum decision and order denying Bray's motion. Later, pursuant to a plea agreement, Bray entered a conditional plea of guilty to one count of possession of a controlled substance with intent to deliver, reserving the right to appeal the denial of his motion to suppress. The state dismissed the remaining counts against Bray. Bray received a unified sentence of five years with a one-year fixed term of confinement. The district court retained jurisdiction over Bray for the first 120 days pursuant to I.C. § 19-2601, and stayed execution of the sentence during the pendency of this appeal.

REASONS FOR GRANTING THE WRIT

Timothy Bray submits that the Idaho Court of Appeals has decided a federal question in a way that conflicts with an applicable decision of this Court. Specifically, Timothy Bray contends that the Decision of the Idaho Court of Appeals in this case is contrary to this Court's decision in Florida v. Wells, 495 U.S. 1, 110 S.Ct. 1632, 102 L.Ed.2d 309 (1990).

Bray recognizes that this Court, in the case of Colorado vs. Bertine, 479 U.S. 367, 107 S.Ct. 739, 93 L.Ed. 2d 739 (1987), cited by the District Court and the Idaho Court of Appeals in denying Bray's Motion to Suppress and Dismiss, upheld the inventory search of a closed backpack in an impounded vehicle in which backpack were found controlled

substances. In Colorado vs. Bertine, supra., this Court, in addressing the issue of searching the closed backpack, stated at 107 S.Ct. 743:

> "Bertine finally argues that the inventory search of his van was unconstitutional because departmental regulations gave the police officers discretion to chose between impounding his van and parking and locking it in a public parking place. The Supreme Court of Colorado did not rely on this argument in reaching its conclusion and we reject it. Nothing in Opperman or Lafayette prohibits the exercise of police discretion so long as that discretion is exercised according to the standard criteria and on the basis of something other than the suspicion of the evidence of criminal activity. Here, the discretion afforded the Boulder police to exercise in line with standardized criteria, relating to the feasibility and appropriateness of parking and locking a vehicle rather than impounding it. There was no showing that the police officer chose to impound Bertine's van in order

> to investigate suspected criminal activity." (Emphasis added.)

At Bray's Motion to Suppress hearing, the State introduced Section 5.9.6 of the Idaho State Police Operations Manual as support for the State's position that standard criteria existed for searching Bray's saddlebags. An examination of that manual section reveals that the only references to inventorying are:

> "In the event the driver of a motor vehicle is arrested and the vehicle must be impounded for reasons of safety, protection of vehicle, content, evidence or it is not practicable to honor a specific request by the driver or owner, the non-preference wrecker from the top of the rotation list will be dispatched. Any deviation must be justified to the District Commander. In every case, all impounded vehicles must be inventoried by the impounding officer on I.S.C. Form 112 prior to the time the wrecker operator takes control of the vehicle."

There is nothing in the State Police Operations Manual specifying the manner or method of conducting the inventory nor are there any guidelines regarding opening closed containers.

Subsequent to the District Court's Memorandum Decision of November 15, 1989, denying Defendant's Motion to Suppress, this Court further defined the "standardized criteria" guidelines of Bertine, supra, in its April 18, 1990, Decision of Florida vs. Wells, 495 U.S. 1, 110 S.Ct. 1632, 109 L.Ed.2d 309 (1990). In Wells, supra, the Florida State Supreme Court noted the absence of any Florida Highway Patrol policy on the opening of closed containers found during inventory searches and held that Bertine, supra, requires police to mandate either that all containers be opened during such

searches or that no containers be opened, leaving no room for discretion on the part of individual officers.

This Court, in Florida vs. Wells, supra, in responding to the decision of the Florida Supreme Court, stated at 110 U.S. 1634:

> "The Supreme Court of Florida relied on the opinion in Colorado vs. Bertine. Referring to language in the Bertine concurrence and a footnote in the majority opinion, the Court held that:
>
> > 'In the absence of a policy specifically requiring the opening of closed containers found during a legitimate inventory search, Bertine prohibits us from countenancing the procedure followed in this instance.'
>
> "According to the Court, the record contained no evidance of any highway patrol policy on the opening of closed containers found during

inventory searches. The Court added, however, that:

> 'The police under Bertine must mandate either that all containers will be opened during an inventory search, or that no container will be opened. There can be no room for discretion.'"

This Court in Florida vs. Wells, then went on to state at 110 S.Ct.1635:

> "While this latter statement of the Supreme Court of Florida derives support from a sentence in the Bertine concurrence taken in isolation, we think it is at odds with the trust of both the concurrence and the opinion of the court in that case. . . Our view that standardized criteria ibid, or established routine, Illinois vs. Lafayette, 62 U.S. 640, 648, 103 S.Ct. 2605, 2610, 77 L.Ed.2d 65 (1983), must regulate the opening of containers found during inventory searches is based upon the principal that an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence. The policy or practices governing inventory

searches should be designed to produce an inventory. The individual police officer must not be allowed so much latitude that inventory searches are turned into 'a purposeful and general means of discovering evidence of crime. Bertine, supra.

"But in forbidding uncanalized discretion to police officers conducting inventory searches, there is no reason to insist that they be conducted in a totally mechanical "all or nothing" fashion. Inventory procedures serve to protect and owner's property while it is in the custody of the police, to insure against claims of loss, stolen or vandalized property, and to guard the police from danger . . . A police officer may be allowed sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself. Thus, while policies of opening all containers or opening no containers are unquestionably permissible, it would be equally permissible, for example, to allow the opening of closed containers whose contents officers determine

> they are unable to ascertain from examining the containers' exteriors. The allowance of the exercise of judgment based on concerns related to the purposes of the inventory search does not violate the Fourth Amendment."

However, this Court in Florida vs. Wells, supra., in upholding the Florida Supreme Court's decision that the search in question did, in fact, violate the defendant's Fourth Amendment rights against unreasonable search and seizure, went on to conclude at 110 S.Ct. 1635:

> "In the present case, the Supreme Court of Florida found that the Florida Highway Patrol had no policy whatever with respect to opening of closed containers encountered during an inventory search. We hold that absence such a policy, the instant search was not sufficiently regulated to satisfy the Fourth Amendment and the marijuana which was found in the suitcase, therefore, was properly

> suppressed by the Supreme Court of Florida." (Emphasis added).

The Idaho Court of Appeals, in this case, in addressing this Court's Decision in Florida vs. Wells, supra., stated at 92.10 ICAR 642 that:

> "Even if we were to decide, which we do not, that the Idaho State Police has failed to institute standardized criteria or an established routine to govern the opening of closed containers found during an inventory, we nevertheless uphold the inventory procedure conducted in this case. The saddlebags in this case are distinguishable from the suitcase which was held to be a"closed container" in Wells. The suitcase in Wells was locked and it was found inside the trunk of the impounded vehicle. The saddlebags in this case were not locked, and they were found attached to the exterior of the impounded vehicle. The measures required to reasonably secure the contents of the saddlebags were significantly different from the measures required to reasonably secure the contents of the suitcase. As discussed above, we believe that the

> saddlebags in this case are analogous to the glove compartment in South Dakota vs.Opperman. 428 U.S.364 (1976)....."

In this case, it is Bray's contention that the facts present in Opperman, supra., do not justify the Idaho Court of Appeals' distinction between Opperman, supra., and Wells., supra. The decision in Opperman, supra., was not limited to the fact that the container must be both locked and in trunk of a vehicle before it is entitled to the protection of Fourth Amendment right. Pursuant to this Court's more recent decision in Wells, supra., in order for the search to be valid, it must be conducted pursuant to standardized police procedure specifically governing the opening of closed containers of any type.

In this case, Bray asserts that there is no evidence in the record establishing that the Idaho State Police had a policy with respect to opening of closed containers encountered during an inventory search.

In response to Bray's contention that there is no record in this case of a standardized inventory procedure allowing opening closed containers, the State's Brief to the Idaho Court of Appeals in this case stated:

> "The record establishes that I.S.P. does have a policy on closed containers. During the preliminary hearing, counsel for Bray asked Corporal Stokesberry about the scope of inventory. The exchange was as follows:
>
> Q But wasn't it your job to inventory the entire motorcycle?
>
> A It was my job to inventory the things that I was aware of and knew about, yes.

> Q Would that include opening up baggage and stuff like that?
>
> A That's correct.
> (Emphasis added.)
>
> This testimony establishes that there is a policy regarding the opening of closed containers . . ."

It is Bray's contention that such evidence does not establish or demonstrate a standardized Idaho State Police policy allowing opening closed containers. Officer Stokesberry's preliminary hearing testimony does not establish or reveal any standardized policy allowing opening closed containers, rather it simply demonstrates what Officer Stokesberry believed his "job" to be during inventory searches. Therefore, according to Florida vs. Wells, supra., absent such a policy, the search in question was not sufficiently

regulated to satisfy the Fourth Amendment and therefore the Idaho Court of Appeals erred in affirming the denial of Bray's Motion to Suppress and the Idaho Supreme Court erred in failing to grant Bray's Petition for Review..

Bray submits that Florida vs. Wells, supra, and other cases following the dictates of this Court, require more substantial evidence of a standardized inventory policy allowing opening closed containers. See United States vs. Hahn, 922 F.2d 243 (5th Cir.Ct.App., 1991); and U.S. vs. Salmon, 944 F.2d 1106 (3rd Cir. Ct.App. 1991); State vs. Acosta, 801 P.2d 489 (Ariz. Ct.App., 1990); State vs. Sterger, 808 P.2d 122 (Utah Ct.App., 1991); Commonwealth vs. Garcia, 569 N.E. 2d 385 (Mass., 1991).

Therefore, Bray contends that the Idaho Court of Appeals in this case erred in not following those decisions and erred in not requiring more substantial evidence of a standardized police procedure governing the opening of closed containers.

In the instant case, Bray contends that Officer Stokesberry, in inventorying the contents of Bray's saddlebags, was acting purely on suspicion of evidence of criminal activity and this evidence was what Officer Stokesberry was looking for. The inventory was used as an excuse to search the property of Bray.

In the instant case, it is Bray's contention that his saddlebags attached to his motorcycle should simply have been inventoried as saddlebags as a single unit. Contrary to the Decision of the

Idaho Court of Appeals in this case, it was not necessary for the officer conducting the inventory to go through the entire contents of his saddlebags.

CONCLUSION

The Petitioner, Timothy Bray prays that his petition for writ of certiorari be granted and that oral argument be scheduled, or that his petition for writ of certiorari be granted and the decision of the Idaho Court of Appeals be summarily reversed.

DATED this 25th day of November, 1992.

Respectfully submitted,

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APPENDIX A

1992 Opinion No. 79
IN THE COURT OF APPEALS
OF THE STATE OF IDAHO
No. 18982
Cite as: 92.10 ICAR 639

THE STATE OF IDAHO,
Plaintiff-Respondent,
v.
TIMOTHY BRAY,
Defendant-Appellant.

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Boise County. Honorable Robert Newhouse, District Judge.

Order denying motion to suppress evidence seized during inventory search of impounded motorcycle's saddlebags, affirmed.

ATTORNEYS:

Donald A. Lassaw of Boise for appellant.

Honorable Larry Echohawk, Attorney General; Thomas P. Watkins, Deputy Attorney General; for respondent. Mr. Watkins argued.

Filed: May 4, 1992.
Frederick C. Lyon, Clerk.

SWANSTROM, J.

Timothy Bray conditionally pled guilty under I.C.R. 11 to possession of a controlled substance with intent to deliver, reserving his right to appeal from a district court order denying his motion to suppress. The issue he presents in this appeal is whether his Fourth Amendment rights against unreasonable searches and seizures were violated when a police officer, responding to a motorcycle accident, conducted an inventory search of two saddlebags belonging to Bray and found illegal drugs. We agree with the district court's conclusion that the inventory search was the reasonable exercise of a police caretaking function,

not proscribed by the Fourth Amendment, and we affirm.

FACTS AND PROCEDURAL BACKGROUND

On August 24, 1988, Bray was riding a motorcycle on state Highway 55 near the top of Horseshoe Bend Hill when he lost control of the motorcycle. Idaho State Police Officer George Stokesberry was the first officer to arrive at the scene of the accident. When Stokesberry arrived, a number of people were gathered around the accident scene, and Bray was sitting on a guardrail receiving medical attention to an EMT who had happened to pass by. The motorcycle which Bray had been riding had been picked up and parked on its kickstand by the side of the road and a number of items which had fallen off of the motorcycle during the crash

had also been picked up and placed on top of the motorcycle. Stokesberry observed that Bray was covered with dirt and blood and had sustained various lacerations and abrasions about his head, face, and hands. Stokesberry also observed that Bray had a severe injury to his foot where the motorcycle's footpeg had gone through his boot. As a result of the foot injury, Bray was unable to walk. Stokesberry learned that an ambulance had already been called to the scene.

In conversing with Bray, Stokesberry noted that Bray was very concerned about the motorcycle and that Bray repeatedly expressed the desire to be left alone and to ride away from the scene on his own. Having determined, however, that Bray would pose a risk to himself and others

if allowed to operate the motorcycle in his present condition, Stokesberry informed Bray that he would not be allowed to operate the motorcycle and that a wrecker had been called to retrieve it. Ultimately, Bray consented to being transported by ambulance to a hospital for treatment of his injuries.

Before Bray was placed in the ambulance, one of the ambulance attendants advised Stokesberry that Bray was carrying a gun in his belt, and requested that Stokesberry confiscate the gun. Stokesberry did so, and asked Bray if he had any other weapons in his possession. Bray replied that he had a .357 magnum in one of the motorcycle's saddlebags.

At the time of this incident, the official policy regarding inventory searches of impounded vehicles set forth in the Idaho State Police Operations Manual provided that "[i]n every case, all impounded vehicles must be inventoried by the impounding officer on ISP Form 112 prior to the time the wrecker operator takes control of the vehicle." Pursuant to this policy, Stokesberry performed an inventory of the items contained within and on the motorcycle. Stokesberry commenced by inventorying the contents of the motorcycle's two leather saddlebags. The lids of these saddlebags were unlocked but fastened by leather straps and buckles. Upon inventorying the saddlebags, Stokesberry found, among

other things, a .357 magnum revolver; six bottles containing sodium chloride (a chemical used to manufacture methamphetamine); and several plastic bags, containing substances which appeared to be methamphetamine, marijuana, and LSD. One of the plastic bags containing the methamphetamine also contained three bundles of cash, each bundle containing $1,000. Upon finding what he believed to be controlled substances, Stokesberry, pursuant to department policy, stopped the inventory and radioed the Bureau of Narcotics for assistance in investigating the matter. Stokesberry waited to resume the inventory until after the narcotics investigator had arrived and had completed his investigation at the scene.

The Bureau of Narcotics dispatched investigator David Kynoch, who conducted a number of field tests at the scene to make a preliminary determination as to the nature of the substances found in Bray's saddlebags. Kynoch's tests indicated that the plastic bags contained methamphetamine, LSD, and marijuana. Kynoch took the items containing the contraband back to the laboratory for further testing.

After Kynoch removed the items containing the contraband, Stokesberry finished inventorying the property on the motorcycle, noting such items as a pair of binoculars, a scanner that was evidently broken during the accident, thirty-four rounds of .38 ammunition, some .22 magnum ammunition, a red leather

coat, chaps, a yellow rain coat and pants, miscellaneous clothing, three fishing poles and reels which apparently had also been broken during the accident, a 35mm camera, and tools. Stokesberry took these items to a state police warehouse. The motorcycle was initially transported to the storage facilities of the wrecker, and was later transported to the state police warehouse.

Bray was subsequently charged with two counts of possession of a controlled substance with intent to deliver, one count of concealing a deadly weapon, and one count of basic rule infraction. A preliminary hearing was held, after which Bray was bound over for trial in the district court. Bray then filed a motion to suppress in the district court,

alleging that the evidence seized from the saddlebags and admitted at the preliminary hearing should have been suppressed because the inventory of the saddlebags violated his Fourth Amendment rights against unreasonable searches and seizures. After a hearing on the motion, the district court issued a memorandum decision and order denying Bray's motion. Later, pursuant to a plea agreement, Bray entered a conditional plea of guilty to one count of possession of a controlled substance with intent to deliver, reserving the right to appeal the denial of his motion to suppress. The state dismissed the remaining counts against Bray. Bray received a unified sentence of five years with a one-year fixed term of confinement. The district court

retained jurisdiction over Bray for the first 120 days pursuant to I.C. § 19-2601, and stayed execution of the sentence during the pendency of this appeal.

STANDARD OF REVIEW

The question we are asked to decide is whether the district court erred in denying Bray's motion to suppress. The standard for reviewing orders denying motions to suppress evidence is well established; we will not disturb the district court's determinations of fact which are based upon substantial evidence, but we exercise free review of the lower court's decision as to whether constitutional requirements have been satisfied in light of the facts found. *State v. Culbertson, 105 Idaho 128, 666*

P.2d 1139 (1983); State vs. Rusho, 110 Idaho 556, 716 P.2d 1328 (Ct.App. 1986).

ANALYSIS

In its memorandum decision, the district court determined that because Bray was transported to Boise in an ambulance and the motorcycle was left standing upright near the edge of Highway 55, Stokesberry "had the authority and in fact even the responsibility of removing the motorcycle to a place of safekeeping." This determination is supported by substantial evidence in the record. Stokesberry testified that he refused to allow Bray to operate the motorcycle after the accident because, in his judgment, Bray's injuries left him physically unable to safely do so. The evidence also shows that after the

accident, the motorcycle was parked upright near the edge of Highway 55. Various items which had fallen off during the accident were stacked on top of the motorcycle. Bray did not attempt to entrust the motorcycle to anyone at the accident scene. He testified, rather, that he told Stokesberry to leave the motorcycle where it was; that he had friends who were coming to pick it up. The record shows, however, that during the approximately two and one-half hours that Stokesberry was at the scene of the accident before the motorcycle was taken away, no one associated with Bray came to pick up either the motorcycle or the property found thereon.

Once a decision is made to impound a vehicle, an inventory search of the

vehicle is permissible. *State vs. Smith, 120 Idaho 77, 80, 813 P.2d 888, 891 (1991).* Under I.C. § 49-662(2) and (3)(b),

> (2) Any peace officer is authorized to remove or cause to be removed to a place of safety any unattended vehicle illegally left standing upon any highway in a position or under circumstances as to obstruct the normal movement of traffic.
>
> (3) Any peace officer is authorized to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a highway when:
>
> > (b) The person or persons in charge of the vehicle are unable to provided for its custody or removal[.]

We conclude the evidence adduced in this case and the law of Idaho both support the district court's conclusion that Stokesberry's impounding of the

motorcycle was legal and proper. This conclusion is also consistent with constitutional law. The Supreme Court has stated that "[t]he authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge." *South Dakota v. Opperman, 428 U.S. 364, 369 (1976).* See also *State vs. Smith, supra.*

Having affirmed the district court's conclusion that impounding Bray's motorcycle was proper, we must consider whether the subsequent inventory of the motorcycle performed by Stokesberry was also proper. This question requires us to determine whether, consisting with the Fourth Amendment, it is reasonable for police, as part of a routine

administrative procedure, to open and search the saddlebags of a motorcycle that has been lawfully impounded by the police. It is important to note, initially, that

> inventory searches are now a well-defined exception to the warrant requirement of the Fourth Amendment. The policies behind the warrant requirement are not implicated in an inventory search, nor is the related concept of probable cause:
>
> > The standard of probable cause is peculiarly related to criminal investigations, not routine, non-criminal procedures . . . The probable-cause approach is unhelpful when analysis centers upon the reasonableness of routine administrative caretaking functions, particularly when no claim is made that the protective procedures are a subterfuge for criminal investigations.

Colorado vs. Bertine, 479 U.S. 367, 371 (1987). In this case, Bray has alleged that the inventory of his saddlebags was merely a pretext to allow Stokesberry to search for incriminating evidence. The district court found, however, that Bray failed to make a convincing showing of bad faith by the police officers involved.

This finding is supported by the evidence, or lack or thereof, in the record. To support his allegation that Stokesberry's real purpose was to search for evidence of crime, rather than to inventory the items on the motorcycle, Bray has argued that Stokesberry's inventory was incomplete, in that he did not list all the items found on the motorcycle. Stokesberry testified that

he inventoried the motorcycle, including the contents of the saddlebags, because he had a duty to do so under the State Police policy that all impounded vehicles will be inventoried. He further testified that the purposes behind this policy were "to protect the property of the individual, and also to protect the wrecker service and the police officer so that we can document everything that is there so that nothing comes up missing and everything is protected as well as possible." While Stokesberry admitted on cross-examination that he did not list each and every item found during the inventory, he also explained that the purpose of his inventory was only to list "[t]hose items that [he] felt were of a vulnerable nature to be used by someone

else or of value." According to Stokesberry's testimony, he did list those items which were valuable and vulnerable. Bray did not enter into evidence the inventory list produced by Stokesberry, nor did he show that Stokesberry failed to list items which were valuable and vulnerable. Thus, the record supports the district court's finding that the officers involved did not act in bad faith.

Absent a showing of bad faith by the police, our analysis, as stated in *Bertine, centers upon the reasonableness of the inventory procedure performed by Stokesberry. In determining whether a particular inventory procedure is reasonable, we must balance the legitimate interests of the government in*

carrying out its administrative caretaking functions against the Fourth Amendment interests of the individual in the property subject to the inventory. Illinois v. Lafayette, 462 U.S. 640, 647 (1983).

The Supreme Court, in a number of cases, has recognized legitimate government interests in various administrative caretaking functions of police, which interests have been held to outweigh the individual's Fourth Amendment interests. In upholding an inventory search of a glove compartment in an abandoned automobile impounded by police, the Supreme Court in *Opperman* stated:

> When vehicles are impounded, local police departments generally follow a routine practice of securing and

> inventorying the automobiles' contents. These procedures developed in response to three distinct needs: the protection of the owner's property while it remains in police custody, the protection of the police against claims or disputes over lost or stolen property, and the protection of the police from potential danger. The practice has been viewed as essential to respond to incidents of theft or vandalism.

Opperman, 428 U.S. at 369. In *Opperman*, the Court recognized that state courts, in applying the Fourth Amendment standard of reasonableness, have overwhelmingly concluded that, even if an inventory is characterized as a 'search,' the intrusion is constitutionally permissible." *Opperman*, 428 U.S. at 370-71. Citing numerous cases, the Court recognized that the majority of federal courts of appeal have likewise sustained

inventory procedures as reasonable police intrusions. The Court further noted that:

> These cases have recognized that standard inventories often include an examination of the glove compartment, since it is a customary place for documents of ownership and registration, as well as a place for the temporary storage of valuables.

Opperman, 428 U.S. at 372 (citation omitted).

In *Lafayette*, the Supreme Court upheld a procedure pursuant to which the contents of the defendant's shoulder bag were inventoried at the time he was booked at the police station for disturbing the peace. During the inventory, amphetamine pills were discovered inside the plastic wrap of a cigarette package found in the shoulder bag. In upholding the inventory

procedure, the Court balanced the intrusion on the individual's Fourth Amendment interests against the same governmental interests recognized in *Opperman*: the property owner's protection against theft, the protection of the police against false claims of stolen or damaged property, and protection of the police and others against potentially dangerous objects. The Court concluded, as in *Opperman*, that the legitimate governmental interests in inventorying the entire contents of the shoulder bag outweighed the defendant's privacy interests in the contents of the bag.

In *Bertine*, police officers discovered drugs while inventorying the defendant's van. The drugs were

discovered when the officer opened metal containers found inside a closed nylon bag, which was found inside a closed backpack behind the driver's seat of the van. In upholding the inventory of the backpack and the containers found therein, the court noted that: [k]nowledge of the precise nature of the property help[s] guard against claims of theft, vandalism, or negligence. Such knowledge also helps to avert any danger to police or others that may [be] posed by the property." *Bertine*, 479 U.S. 367, 373 (1987).

In *Florida v. Wells*, 495 U.S. 1 (1990), the Supreme Court established additional criteria for determining whether an inventory procedure is unreasonable when the inventory search

included the opening of closed containers found within the impounded vehicle. In *Wells, the defendant's car was impounded subsequent to his arrest for DUI. After the car was impounded, a highway patrol officer inventoried the contents of the car and found a locked suitcase in the trunk. When the officer forced the suitcase open, he found a bag containing a considerable amount of marijuana.*

The Supreme Court held that the evidence seized in Wells was fruit of an unconstitutional search because the highway patrol department had failed to establish any policy with respect to opening closed containers encountered during inventory searches. The Court held that the law enforcement agencies must institute either standardized

criteria or an established routine to govern the opening of closed containers encountered during inventory searches. The Court further held that where law enforcement agencies have not established standardized criteria or routine practice regarding the opening of closed containers, an inventory which includes the opening of closed containers is unreasonable, being insufficiently regulated to satisfy the Fourth Amendment. The Court also noted, however, that nothing in its prior cases prohibits the exercise of police discretion so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity. *Wells*, 495 U.S. at 3.

There are a number of facts in this case which lead us to the conclusion that the inventory of Bray's saddlebags was reasonable under the Fourth Amendment. We note, first, that the saddlebags were not locked, but were readily accessible to would-be thieves or vandals. This is significant in light of the fact that Stokesberry had been told by Bray that there was a .357 magnum revolver in one of the saddlebags. In *Cady vs. Dombrowski*, 413 U.S. 433, 436 (1973), the Supreme Court upheld the warrantless search of an automobile even though no probable cause existed to believe that the vehicle contained fruits of a crime. The Court held that the warrantless intrusion was justified because the officers had reasonable grounds to

believe that a weapon might be in the car, and thus available to vandals. The Court upheld the search as a reasonable exercise of the officers' caretaking function to protect the community's safety.

The governmental interests which justified the search in *Cady* are even more compelling in this case. In *Cady*, the police merely suspected that a gun would be found in the impounded vehicle, and the vehicle was a car that could have been locked. In this case, Stokesberry was informed by Bray that there was, in fact, a gun in one of the saddlebags, and the saddlebags were unlocked and on the outside of the motorcycle. Accordingly, we hold that Stokesberry's opening of the saddlebags to locate and secure the gun

was justifiable pursuant to his community caretaking function as a police officer.

The unsecured condition of the saddlebags is also significant in light of the fact that saddlebags are "a customary place for documents of ownership and registration, as well as a place for the temporary storage of valuables." *Opperman*, 428 U.S. at 372. The same government interests which justified the inventory of the glove compartment in *Opperman* justify the inventory of the saddlebags in this case. Where the police are potentially responsible for property taken into their custody, it is reasonable for them to secure and protect the property from unauthorized interference. Inventories are a valid means of securing and

protecting the impounded property. As recognized by the Supreme Court, in *Colorado v. Bertine, supra,* "[k]nowledge of the precise nature of the property help[s] guard against claims of theft, vandalism or negligence. Such knowledge also help[s] to avert any danger to police or others that may have been posed by the property." 479 U.S. at 373. Stokesberry could not know what property was inside the saddlebags without opening the bags and performing an inventory. Stokesberry's stated reason for performing the inventory was to list those items which were valuable and at the same time vulnerable to being damaged or stolen. We hold that Stokesberry's inventory of the saddlebags was reasonable in light of the legitimate

governmental interest in protecting Bray's property while it was in the custody of the police, to insure against claims of lost, stolen or vandalized property, and to guard the police from danger." *Bertine*, 479 U.S. at 372.

Finally, Bray argues that the saddlebags should have been inventoried simply as "two saddlebags," and that Stokesberry's inventory of the saddlebags' contends exceeded the permissible scope of a valid inventory search under *Wells*. *Bray asserts that the saddlebags were "closed containers," and that under Wells*, Stokesberry was prohibited from opening and inventorying closed containers because the Idaho State Police, a division of the Department of Law Enforcement, had at the time, no

standardized criteria or established routine governing the opening of closed containers found while inventorying the contends of impounded vehicles.

Even if we were to decide, which we do not, that the Idaho State Police has failed to institute standardized criteria or an established routine to govern the opening of closed containers found during an inventory, we nevertheless uphold the inventory procedure conducted in this case. The saddlebags in this case are distinguishable from the suitcase which was held to be a "closed container" in *Wells*. *The suitcase in Wells* was locked, and it was found inside the trunk of the impounded vehicle. The saddlebags in this case were not locked, and they were found attached to the exterior of the

impounded vehicle. The measures required to reasonably secure the contents of the saddlebags were significantly different from the measures requires to reasonably secure the contents of the suitcase. As discussed above, we believe that the saddlebags in this case are analogous to the glove compartment of the impounded vehicle in *Opperman*. In upholding the inventory of the glove compartment in *Opperman*, the Supreme Court did not analyze the glove compartment as a closed container, nor did it require the state to show that it had instituted standardized criteria or established routine with respect to the opening of glove compartments. The Court analyzed the inventory of the glove compartment in light of the characteristics of a glove

compartment and the governmental interests which justify inventory procedures and concluded that the inventory was reasonable. Because we find the saddlebags in this case to be more analogous to the glove compartment in *Opperman* than the suitcase in *Wells*, we uphold the inventory of Bray's saddlebags under the same analysis employed in *Opperman*, and we will not employ the more stringent analysis which *Wells applied to closed containers.*

In any case, the Court in Wells stated that "[a] police officer may be allowed sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself." *Wells*, 495

U.S. at 4. In light of the nature of the search and the characteristics of Bray's saddlebags, had Stokesberry not opened the saddlebags, but inventoried them as single units, the inventory procedure would not have served any of its legitimate purposes, i.e., protection of Bray's property, protection of the police and the wrecker from false claims of missing or damaged items, and protection of the police and others from dangerous instrumentalities which might be found with the impounded vehicle.

CONCLUSION

Having considered the purposes behind the inventory procedure and the characteristics of Bray's saddlebags, we conclude that Stokesberry's opening and inventorying of the saddlebags was a

reasonable exercise of the administrative caretaking function of the police. Accordingly, we affirm the order denying Bray's motion to suppress.

WALTERS, C.J., and SILAK, J., concur.

APPENDIX B

IN THE SUPREME COURT
OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	ORDER DENYING
Plaintiff-Respondent,	)	PETITION FOR REVIEW
	)	
v.	)	No. 18982
	)	
TIMOTHY BRAY,	)	Rev. No. 92R-40
	)	
Defendant-Appellant.	)	

The Appellant having filed a PETITION FOR REVIEW on May 26, 1992, and a supporting BRIEF on July 8, 1992, seeking review of the Opinion of the Court of Appeals filed May 4, 1992; therefore, after due consideration,

IT IS HEREBY ORDERED That Appellant's PETITION FOR REVIEW be, and hereby is, DENIED.

DATED this 28th day of August, 1992.

By Order of the Supreme Court

Frederick C. Lyon, Clerk

cc: Counsel of Record
District Court Clerk
District Judge Robert G. Newhouse